

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

LISA SMITH, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

APRIA HEALTHCARE LLC,

Defendant.

Case No. 1:23-cv-01003-RLY-KMB

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

ROBERT N. HERRERA, individually, and
on behalf of all others similarly situated,

Plaintiff,

vs.

APRIA HEALTHCARE LLC,

Defendant.

Case No. 1:23-cv-01031-RLY-KMB

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

SUZANNE CUYLE, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

APRIA HEALTHCARE LLC,

Defendant.

Case No. 1:23-cv-01042-TWP-MKK

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

**PLAINTIFFS' MOTION TO CONSOLIDATE ACTIONS AND SET SCHEDULING
DEADLINES**

Pursuant to Federal Rule of Civil Procedure 42(a), plaintiffs in three related cases, *Lisa Smith, et al. v. Apria Healthcare LLC*, No. 1:23-cv-01003-RLY-KMB ("*Smith*"); *Robert N.*

Herrera v. Apria Healthcare LLC, No. 1:23-cv-01031-RLY-KMB (“*Herrera*”), and *Suzanne Cuyle v. Apria Healthcare LLC*, No. 1:23-cv-01042-TWP-MKK (“*Cuyle*”) (collectively, “Related Action Plaintiffs” or “Plaintiffs”), by their respective counsel, jointly move for the three actions, along with any subsequently-filed related actions, to be consolidated for all pretrial and trial proceedings, and respectfully request the Court enter an Order to consolidate these actions and set deadlines for filing a consolidated complaint. In support of their motion, Plaintiffs state:

1. The *Smith*, *Herrera*, and *Cuyle* actions are currently pending in this District and arise out of the same or similar operative facts.

2. On June 9, 2023, Delaney & Delaney LLC and Siri & Glimstad LLP filed the *Smith* matter, which has been assigned to the Honorable Richard L. Young.

3. On June 13, 2023, Clayeo C. Arnold, P.C. and Wucetich & Korovilas LLP filed, the *Herrera* matter, which has also been assigned to the Honorable Richard L. Young.

4. On June 15, 2023, Kessler Topaz Meltzer & Check LLP and RileyCate, LLC filed the *Cuyle* matter, which has been assigned to the Honorable Tanya Walton Pratt.

5. Federal Rule of Civil Procedure 42(a) states that: “If actions before the court involve a common question of law or fact, the court may . . . consolidate the actions.”

6. Local Rule 42-1 states that: “A party seeking to consolidate two or more civil cases must: (a) file the motion in the case with the earliest docket number; and (b) file a notice of the motion in all the other cases.”

7. Pursuant to Federal Rule of Civil Procedure P 42(a) and Local Rule 42-1 and to conserve the resources of the Court and the parties, Plaintiffs seek to consolidate the three Related Actions for all purposes, including pretrial proceedings and trial before the Honorable Richard L. Young as a consolidated case (hereafter the “Consolidated Action”).

8. To ensure consistent and efficient adjudications in this Court, the “Consolidated Action” will bear the Master File No. 1:23-cv-01003-RLY-KMB, the number assigned to the first-filed case and reflect the following caption:

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

IN RE APRIA DATA BREACH LITIGATION

Master File No. 1:23-cv-01003-RLY-KMB

This Document Relates To:

9. Plaintiffs request that the case file for the Consolidated Action be maintained under Master File No. 1:23-cv-01003-RLY-KMB. When a pleading is intended to apply to all actions to which this Order applies, the words “All Actions” shall appear immediately after the words “This Document Relates To:” in the caption described above. When a pleading is not intended to apply to all actions, the docket number for each individual action to which the paper is intended to apply and the last name of the first-named plaintiff in said action shall appear immediately after the words “This Document Relates To:” in the caption identified above, *e.g.*, “No. 1:23-cv-01031-RLY-KMB (“Herrera”).”

10. Plaintiffs further request that any action subsequently filed in, transferred to, or removed to this Court that arises out of the same or similar operative facts as the Consolidated Action, be consolidated with the Consolidated Action for pre-trial purposes. The Parties should be directed to file a “Notice of Related Action” whenever a case that should be consolidated into this action is filed in, transferred to, or removed to this District.

11. If the Court determines that the case is related, Plaintiffs propose that the clerk:

- a. Place a copy of this Order in the separate file for such action;
- b. Serve on Plaintiffs' counsel in the new case a copy of this Order;
- c. Direct that this Order be served upon defendant(s) in the new case; and
- d. Make an appropriate entry in the Master Docket.

12. Plaintiffs further request that any attorney who has filed an action in this litigation may file an application for appointment as interim class counsel or other designated counsel either individually or as part of a proposed leadership structure. All applications should be limited to 20 pages and e-filed in Master File No. 1:23-cv-01003-RLY-KMB, no later than 5:00 p.m. Eastern Time within five (5) business days after the date the Court enters a Consolidation Order. A response of no more than five (5) pages shall be allowed and must be filed no later than 5:00 p.m. Eastern Time within five (5) business days after the date of filing of the aforesaid application for appointment as interim class counsel or other designated counsel. If the Court determines that a hearing should be held on the applications or appoint interim counsel or other designated counsel, only timely written submissions should be considered.

13. Plaintiffs propose to file a Consolidated Complaint no later than twenty-eight (28) days following the entry of an order appointing interim class counsel or other designated counsel.

14. Any response to the Consolidated Complaint should be filed within twenty-eight (28) days from the filing of the Consolidated Complaint. Should Defendant intend to file a motion to dismiss, the Parties will comply with Local Rule 7-1 with the following clarifications and/or adjustments:

- a. Any opposition to a motion to dismiss shall be filed and served within twenty-eight (28) days of the filing of the motion to dismiss;

b. Any reply brief shall be filed and served within fourteen (14) days of the opposition.

15. Attorneys for the Related Action Plaintiffs, have been unable to confer with counsel for Defendant Apria Healthcare LLC (“Apria”) regarding Plaintiffs’ request to consolidate because Apria has not yet made an appearance and therefore their litigation counsel is still unknown.

16. A proposed form of order granting this Motion to Consolidate is attached. WHEREFORE, Related Action Plaintiffs respectfully request that the Court grant their Motion to Consolidate Actions and Set Scheduling Deadlines and issue an Order in accordance with the proposed order submitted herewith.

Dated: June 16, 2023

DELANEY & DELANEY LLC

By: /s/ Kathleen A. Delaney

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